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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,377	07/05/2006	Annelie Dochling	3636	5949
278	7590	05/27/2009		
MICHAEL J. STRIKER 103 EAST NECK ROAD HUNTINGTON, NY 11743			EXAMINER ELHELO, EISA B	
			ART UNIT	PAPER NUMBER
			1796	
			MAIL DATE	DELIVERY MODE
			05/27/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/585,377

**Applicant(s)**

DOEHLING ET AL.

**Examiner**

Eisa B. Elhilo

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date 7/5/2006
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Claims 1-14 are pending in this application.

#### **DETAILED ACTION**

##### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 provides for the use of a combination, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 14 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

##### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent et al. (US 2002/0046431 A1) in view of Jacquet et al. (US' 4,381,919).

Laurent et al. (US' 431 A1) teaches a hair dyeing composition comprising oxidation dyes as claimed in claim 1 (see page 13, paragraph, 0312), 0.2 to 40% of fatty alcohol alkoxylates such as stearyl alcohol having 20 EO as claimed in claims 1, 6 and 9 (see page 9, paragraphs, 0221-0244 and page 10, paragraph, 0251), alkanolamine derivatives and coconut acid monisopropanolamide in the amount of 4% as claimed in claim 1 (see page 21, paragraph, 0472 and page 22, paragraph, 0493). Laurent et al. (US' 431 A1) teaches also a method for make dyeing composition similar to those claimed by mixing the dyeing ingredients of the composition as described above and as claimed in claim 14 (see page 22, paragraph, 0494).

The instant claims differ from the reference by reciting the weight ratio of the dyeing ingredients. Further, the reference does not teach the claimed species of fatty alcohol and fatty amides as claimed.

However, Laurent et al. suggests the use of fatty amides and fatty alcohols in the dyeing composition (see page 22, paragraph, 0493).

Jacquet et al. (US' 919) in analogous art of hair dyeing formulation, teaches a composition comprising cetyl alcohol and mono or di-ethanolamides derived from lauric acid as claimed (see col. 7, line 6 and lines 40-46).

Therefore, in view of the teaching of the secondary reference, one having ordinary skill in the art at the time the invention was made would be motivated to modify the dyeing composition of Laurent et al. (US' 431 A1) by incorporating cetyl fatty alcohol and fatty amides as taught by Jacquet et al. (US' 919) to arrive at the claimed invention because Laurent et al. (US' 431 A1) as

a primary reference suggests the use of fatty alcohol such as oley alcohol and fatty amides in the dyeing composition. Jacquet et al. (US' 919) as a secondary reference clearly teaches the claimed species cetyl alcohol and monoethanolamide of lauric acid, and, thus a person of the ordinary skill in the art would be motivated to incorporate the fatty amides and fatty alcohols in the dyeing composition of Laurent et al. and would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to the claimed ratios of the dyeing ingredients, it would have been obvious to one having ordinary skill in the art at the time the invention was made to formulate a dyeing composition comprising oxidation dyes and/or direct dyes, fatty alcohols, alkanolamides and alkoxyated fatty alcohols with the weight ratio as claimed to arrive at the claimed invention because the combination of the references, suggest the use of these dyeing ingredients in the dyeing composition in the amounts that overlapped with the claimed ranges and, thus, a person of the ordinary skill in the art would be motivated to optimize the amounts of the dyeing ingredients in the composition in order to get the maximum effective amounts of these ingredients and would expect such a composition to have similar properties to those claimed, absent unexpected results.

Further, applicants have not shown on record the criticality of the claimed ratios between the dyeing ingredients in the claimed composition over the compositions of the prior art of record.

### ***Conclusion***

The references listed on from PTO-1449 have been reviewed by the examiner and are considered to be cumulative to or less material than the prior art references relied upon in

the rejection above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pyon Harold can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eisa B Elhilo/  
Primary Examiner, Art Unit 1796  
May 21, 2009